7 October 2024

**DECISION**

**GREYHOUND RACING VICTORIA**

**and**

**RAYMOND FLOYD**

**Date of hearings:** 10 July 2024, 11 July 2024, 12 July 2024 and 9 August 2024

**Date of decision:** 4 October 2024

**Panel:** Judge Marilyn Harbison (Deputy Chairperson) and Mr Des Gleeson.

**Appearances:** Mr Damien Hannan instructed by Mr Anthony Pearce appeared on behalf of the Stewards.

Mr Raymond Floyd represented himself.

 Mr Scott Burke appeared as a witness.

 Mr Dylan Bartolo appeared as a witness.

 Dr Adam Cawley appeared as a witness.

 Dr Madonna Buiter appeared as a witness.

 Mr Paul Searle appeared as a witness.

 Mr Raymond Floyd appeared as a witness.

 Ms Jennifer Floyd appeared as a witness.

**Charges and particulars: Charge No. 1 of 6**

Greyhounds Australasia Rule 141(1) which reads as follows:

**Rule 141 Greyhound to be free of prohibited substances**

*(1) The owner, trainer or other person in charge of a greyhound:*

1. *nominated to compete in an Event;*
2. *presented for a satisfactory trial or such other trial as provided for by the Rules; or*
3. *presented for any test or examination for the purpose of a stand-down period being varied or revoked,*

*must present the greyhound free of any prohibited substance.*

**Particulars of Charge**

1. You are, and were at all relevant times, a trainer licensed by Greyhound Racing Victoria and a person bound by the Greyhounds Australasia Rules.

1. You were, at all relevant times, the trainer of the greyhound OHANA SITDOWN (VKBIG)*.*

1. OHANA SITDOWN was nominated to compete in Race 8, Warragul Breeders Classic, conducted by the Warragul Greyhound Racing Club at Warragul on Sunday 23rd April 2023.

1. On 23rd April 2023, you presented OHANA SITDOWN at the Event not free of any prohibited substance, given that:
	1. A post-race sample of hair was taken from OHANA SITDOWN at the Event;
	2. Testosterone Propionate was detected in sample V626224.

**Charge No. 2 of 6**

Greyhounds Australasia Rule 142(1) which reads as follows:

**Rule 142 Administration of a prohibited substance established in a sample taken from a greyhound in connection with an Event**

1. An offence is committed if a *person*:

1. *administers, attempts to administer or causes to be administered a prohibited substance to a greyhound;*
2. *aids, abets, counsels or procures the administration of or an attempt to administer a prohibited substance to a greyhound; or*
3. *has prior knowledge of a prohibited substance being administered or attempted to be administered to a greyhound,*

*which is established in any sample taken from a greyhound presented for an Event or when subject to any other contingency pursuant to the Rules.*

**Particulars of Charge**

1. You are, and were at all relevant times, a trainer licensed by Greyhound Racing Victoria and a person bound by the Greyhound Australasia Rules.

1. You were, at all relevant times, the trainer of the greyhound OHANA SITDOWN*.*
2. OHANA SITDOWN was nominated to compete in Race 8, Warragul Breeders Classic, conducted by the Warragul Greyhound Racing Club at Warragul on Sunday 23rd April 2023.
3. You administered, or caused to be administered, to OHANA SITDOWN, a prohibited substance, being Testosterone Propionate, which was detected in a sample taken from OHANA SITDOWN in that:
	1. You administered the substance, namely Testosterone Propionate, to OHANA SITDOWN on or around 23 April 2023;
	2. A post-race sample of hair was taken from OHANA SITDOWN at the Warragul Greyhound Racing Club at Warragul on Sunday 23rd April 2023.
	3. Testosterone Propionate was detected in the Sample.
	4. The presence of Testosterone Propionate detected in the sample could only be caused by the administration of Testosterone Propionate.

**Charge No. 3 of 6**

Greyhounds Australasia Rule 151(1) reads as follows:

**Rule 151 Treatment records to be kept**

1. *The person in charge of a greyhound must keep and retain written records detailing all vaccinations, antiparasitics and treatments administered to the greyhound:*
	1. *from the time the greyhound enters their care until the greyhound leaves their care; and*
	2. *for a minimum of two years*
2. *If requested by a Controlling Body, a Steward, or an authorised person, the record/s of treatment referred to in subrule (1) of this rule must be produced for inspection.*
3. *Each record of treatment kept in accordance with this rule must be made by midnight on the day on which the treatment was given, and, as a minimum requirement, include the following information:*
4. *the name of the greyhound;*
5. *the date and time of administration of the treatment;*
6. *the name of the treatment (brand name or active constituent);*
7. *the route of administration;*
8. *the amount given; and*
9. *the name and signature of the person or persons administering and/or authorising the treatment.*

*For the purpose of subrule (3), “day” means the 24-hour period from 12.00am to 11.59pm on any calendar day.*

1. *An offence is committed if any person in charge of a greyhound at the relevant time fails to comply with any of subrules (1) to (3) of this rule.*
2. *A person who commits an offence under subrule (4) of this rule may be penalised.*
3. *For the purposes of this rule “treatment” includes:*
4. *all Controlled Drugs (Schedule 8);*
5. *all Prescription Animal Remedies and Prescription Only Medicines (Schedule 4);*
6. *any injectable substance not already specified in this rule, notwithstanding the route of administration;*
7. *all Pharmacist Only (Schedule 3) and Pharmacy Only (Schedule 2) medicines; and*
8. *all veterinary and other medicines containing other scheduled or unscheduled prohibited substances.*

**Particulars of Charge**

1. You are, and were at all relevant times, a trainer licensed by Greyhound Racing Victoria and a person bound by the Greyhound Racing Victoria Rules of Racing.
2. On 27 June 2023, you failed to produce compliant treatment records for inspection, upon request from Investigative Steward Dylan BARTOLO, a person authorised by the Controlling Body, for greyhounds for which you were the responsible person at the relevant time.
3. During a property inspection on 27 June 2023, you produced a black diary which contained six (6) entries from March 1 2023 to 2 June 2023 which you stated were your Treatment Records. During a recorded inquiry on 31 July 2023 you stated that you have never kept individual treatment records in the past 13 years.
4. All treatment(s) administered to greyhounds in your care, custody or ownership are required to be recorded in your treatment records.

**Charge No. 4 of 6**

Greyhounds Australasia Rule 144 (1) (c) and (d) reads as follows:

 **144 *Administration, acquisition or possession* of *permanently banned prohibited substances***

1. An offence is committed if a *person*:

(c) has prior knowledge of a *permanently banned prohibited substance* being *administered* or attempted to be *administered* to a *greyhound*;

(d) acquires, attempts to acquire or *possesses* any *permanently banned prohibited substance*.

**Particulars of Charge**

1. You are, and were at all relevant times, a trainer licensed by Greyhound Racing Victoria and a person bound by the Greyhound Australasia Rules.
2. You were, at all relevant times, the trainer of the greyhound OHANA SITDOWN*.*
3. You administered, or caused to be administered, to OHANA SITDOWN, a prohibited substance, being Testosterone Propionate, which was detected in a sample taken from OHANA SITDOWN in that:
	1. You administered the substance, namely Testosterone Propionate, to OHANA SITDOWN on or around 23 April 2023;
	2. A post-race sample of hair was taken from OHANA SITDOWN at the Warragul Greyhound Racing Club at Warragul on Sunday 23rd April 2023.
	3. Testosterone Propionate was detected in the Sample.
	4. The presence of Testosterone Propionate detected in the sample could only be caused by the acquisition and administration of Testosterone Propionate.
	5. The presence of Testosterone Propionate was detected in a 3ml syringe which was seized by Investigative Stewards of the Greyhound Racing Integrity Unit which was found in your possession.

**Charge No. 5 of 6**

Greyhounds Australasia Rule 164(a) reads as follows:

**Rule 164 (a) Offences in relation to investigations and inquiries**

1. *makes a false or misleading statement in relation to or during an investigation, inspection, examination, test or inquiry (or at any other disciplinary process, hearing or appeal proceeding) or makes or causes to be made a falsification in a document in connection with greyhound racing or the registration of a greyhound;*

**Particulars of Charge**

1. You are, and were at all relevant times, a trainer licensed by Greyhound Racing Victoria and a person bound by the Greyhounds Australasia Rules.
2. You were at all relevant times the trainer of the greyhound OHANA SITDOWN.
3. On the 27th of June 2023, during the course of a kennel inspection, a 3ml syringe was seized by Investigative Stewards of the Greyhound Racing Integrity Unit which was found in your possession.
4. During the subsequent Inquiry, you made a false and misleading statement in relation to an investigation or inquiry, in that you stated the syringe contained “Ivomec” that was used to inject cows that are owned by your wife’s parents.
5. The syringe contained the permanently banned prohibited substance Testosterone Propionate.
6. The syringe did not contain the substance Ivomec.

**Charge No. 6 of 6**

Greyhounds Australasia Rule **139 (6) and 139 (7)** reads as follows:

**Rule 139 (6) Permanently banned prohibited substances, and certain offences in relation to them**

1. *If any permanently banned prohibited substance is found at any premises used in relation to greyhound racing, any registered person who owns, trains or races or is in charge of a greyhound or greyhounds at those premises is deemed to have the substance or preparation in their possession.*
2. *An offence is committed if a person is deemed to be in possession of a relevant substance or preparation pursuant to subrule (6).*

**Particulars of the Charge being**:

1. You were, at all relevant times, a public trainer registered with Greyhound Racing Victoria (**GRV**) and a person bound by the Greyhounds Australasia Rules and Local Racing Rules.
2. On 27 June 2023, Greyhound Racing Integrity Unit (‘**GRIU’)** Stewards attended your registered kennel address, namely 202 Cobains East Road, Cobains 3851 to conduct a property inspection and conduct Out of Competition (OOCT) swabs.
3. On 27 June 2023 during the property inspection, ‘GRIU’ Investigative Stewards located and seized a syringe which contained Permanently Banned Prohibited Substance, namely ‘Testosterone Propionate’. The syringe was observed to be in your possession which you attempted to conceal as it fell out of your jacket pocket.

**Pleas:** Guilty to Charge 1

Not Guilty to Charges 2, 3, 5 and 6

 Charge 4 was withdrawn

**DECISION** `

1. Mr Raymond Floyd is the owner and trainer of Ohana Sitdown. On 23 April 2023 he entered that greyhound in a race at Warragul. The greyhound finished in second place.
2. After the race, hair and urine samples were taken from the dog. The Stewards allege that the post-race hair testing revealed the presence of testosterone propionate, a prohibited substance under the Rules.
3. The Stewards visited Mr Floyd's kennels unannounced on 27 June 2023 to advise Mr Floyd of the positive result and to interview him as to how that drug came to be present in his dog.
4. Mr Floyd could not explain how it came to be present. He said that he was shocked. Whilst he was being interviewed a syringe, comprising the shaft with a needle attached, fell out of his pocket. It was on the ground for some time and then Mr Floyd picked it up and returned it to his pocket. The Stewards observed that this had happened and then asked him how the syringe had originally come to be in his pocket.
5. He told them that it was used by him to inject Ivomec into the rumps of cows owned by his wife’s parents. He intimated that it must have been in his pocket from the day before, when he had used it on those cows at their farm. The syringe was confiscated by the Stewards and its contents were later tested. It is alleged by the Stewards that that syringe contained testosterone propionate.
6. At the time of that visit, a further hair sample swab was taken from Ohana Sitdown and from several other dogs owned by Mr Floyd. The hair sample from Ohana Sitdown was tested and a certificate of testing provided. The result of that testing was also positive for the presence of testosterone propionate.
7. We will return to the results from the other greyhounds later in these reasons.
8. On 31 July 2023 the Stewards again attended Mr Floyd's property. They did so because they had received a report that he had attended a racetrack and presented several of his greyhounds to race with shaved tails. The Stewards took hair samples from seven greyhounds which were at his property. There were four female greyhounds with shaved tails out of the seven that were tested.
9. They asked him why the greyhounds’ tails had been shaved. He said that the tails looked untidy and ratty because of the previous hair samples taken by the Stewards and so he decided to shave them with clippers, which he had bought specifically for that purpose.

**The charges**

1. Mr Floyd is now facing four charges arising out of the matters outlined above. The first charge is a presentation charge alleging that he presented Ohana Sitdown on 23 April 2023 when testosterone propionate was present in the dog. The second is a charge that he administered or caused the testosterone propionate to be administered (relying on the presence of testosterone propionate in the syringe). The third was a charge that he did not keep adequate treatment records. This charge was withdrawn by the Stewards in their written submissions on liability. The fourth charge was also withdrawn at the outset of the hearing, as it was a duplication of charge 2. The fifth is a charge that he made a false or misleading statement to the Stewards, namely his assertion that the syringe in his pocket contained the substance Ivomec which was used to inject cows owned by his wife’s parents. The last charge is a charge that a permanently banned substance was found at his premises and that he was in possession of it. This relates to the allegation that this syringe contained testosterone propionate and that the syringe was in Floyd’s possession at the relevant time.
2. Mr Floyd pleaded guilty to the first charge. Mr Floyd has pleaded not guilty to the remaining charges.

**The Standard of proof**

1. Mr Floyd has been a participant in the greyhound racing industry for many years. He makes his living from training greyhounds. We accept that the standard of proof to be applied should be that set out in Briginshaw.

**The evidence**

1. The case was heard over four days.
2. We deal firstly with the scientific evidence that was presented to us and the objections which Mr Floyd made to this evidence.
3. There were two certificates presented. The first from Racing Analytical Services Limited - (RASL) was dated 4 August 2023 and the second from the Queensland Racing Science Centre - (QRSC) was dated 20 September 2023. We note at the outset that a certificate of analysis presented to the hearing is deemed by GAR 154(6) to be prima facie evidence of its contents. This means that, in the absence of contrary evidence, the presentation of a certificate of analysis is evidence that this Tribunal can rely upon to establish the presence of a prohibited substance.
4. As well as the certificates, the Stewards also tendered a report by Dr Adam Cawley, the Scientific Manager of RASL, a report by Dr Stephen Karamatic, the Chief Veterinarian of GRV and a report by Dr Madonna Buiter, a Veterinarian employed by GRV.
5. Dr Adam Cawley and Dr Madonna Buiter gave evidence in the hearing before us. Dr Karamatic was not available to give evidence. Instead, those parts of Dr Karamatic’s report which contained scientific evidence were adopted by Dr Cawley and attested to as part of Dr Cawley’s sworn evidence and those parts of Dr Karamatic’s report which contained veterinary evidence were adopted and attested to by Dr Madonna Buiter.
6. We first turn to the evidence of Dr Adam Cawley.
7. Dr Cawley explained the testing procedure to us. Once the first sample had been analysed, a second portion of hair, collected on the same occasion as the first portion, was sent to referee analysis. Dr Cawley detailed how the Racing Science Centre in Queensland had tested the referee sample and forwarded a certificate of analysis which confirmed the presence of testosterone propionate in the second hair sample.
8. Mr Floyd was critical of Dr Cawley for having specifically requested the Queensland laboratory to test the reserve sample for the presence of testosterone. His submission was that the testing centre should have been sent the hair sample with instructions to test it, but not with the direction that it would be tested for any particular substance. Dr Cawley explained in his evidence that there were strict national and international guidelines as to how the reserve sample should be tested. Part of that procedure was for the testing to focus on only the substance found in the initial sample and thus the referee laboratory was requested to test only for the alleged prohibited substance.

1. Dr Madonna Buiter gave evidence about the nature of testosterone propionate and the way in which that substance is treated in the Rules. Mr Floyd complained that he had never been advised of the threshold applicable to this drug. There are specific thresholds set out within the Rules for the presence of naturally occurring forms of testosterone, given that testosterone in its natural form is present in both male and female greyhounds. However, there are several different forms of testosterone. Dr Buiter’s evidence was that there is no such threshold for testosterone propionate given that it is a synthetic substance. It does not occur naturally in any dog. The presence of any quantity of the drug is sufficient for this offence.
2. It is clear from the evidence which we have heard that the nature of this drug – that is –

it is a synthetic substance. This is of critical importance in this case. Because it is not a naturally occurring substance, it was said by the Stewards that there is no way that this could have been present in any of Mr Floyd’s dogs other than through an injection into the bloodstream of that dog.

1. Dr Buiter also gave evidence about registered products containing testosterone propionate. Although there are 5 registered products which contain this substance, only one is registered for use in dogs. This is a product called Testoprop and it is used as a contraceptive in female dogs. Some other products contain other forms of testosterone, but only Testoprop contains a synthetic form of testosterone.
2. We heard evidence of continuity. This continuity evidence simply established the pathway between the physical taking of each sample and the delivery of that sample to the relevant testing laboratory. There was no significant challenge to this continuity evidence, although Mr Floyd submitted to us that some of the samples tested must have been either contaminated or exchanged for a different sample. We have not been provided with any evidence to support this contention.

**The evidence presented by Mr Raymond Floyd**

1. Mr Floyd gave evidence, as did his wife, Ms Jennifer Floyd.
2. Mr Floyd told us that he was shocked and in disbelief when he was told that testosterone was found in the sample. He said that he had some experience with administering testosterone in the past, as Testoprop had been regularly used by himself and throughout the industry as a contraceptive in female greyhounds. That was until it was banned. He said that his recollection was that Testoprop had been legal until 2018 and then after 2018 his understanding was it was unavailable. It had been replaced by another dog contraceptive called Orabolin which did not contain testosterone. He had used Testoprop on his female dogs for birth control, but had stopped doing so immediately when it was banned. He subsequently used Orabolin instead. He said that he had no Testoprop at his property.
3. Mr Floyd gave evidence about the circumstances under which he came to be in possession of the syringe. He said that when the Stewards visited on 27 June 2023, he was sitting in the lounge room of his house. He and his wife were minding grandchildren that day. He was told the Stewards were there to see him. He walked through the kitchen on his way outside to see them. He said that, as he went through the kitchen, he noticed on the kitchen table that there was a syringe with a needle attached. He put it in his pocket and walked outside. He did so because he was concerned that one of his grandchildren might pick it up.
4. Mr Floyd said that, at the time of the interview on 27 June 2023, he felt lost and confused and was trying to process the information that was told to him by the Stewards. He thought that the testosterone may be connected to the Orabolin, which he was currently giving his bitches. He said that during the interview the phone rang and a syringe fell onto the ground when he took the phone out of his pocket. He said he had not realised the syringe was there and did not try to conceal it from the Stewards. He said that he willingly gave the syringe to the Stewards when so requested. He said that the syringe was one of several syringes which he kept in the kitchen and which were used by him to inject calves. He said that his wife's parents’ farm contained several 30 to 40 kilo calves. He would administer injections of Ivomec to them and that was why he had the syringe.
5. Mr Floyd said that, after the Stewards had confiscated the needle on 27 June 2023, he went inside and told his wife. He said that she said to him that she had used that very syringe on a pony the day before. She had filled the syringe with a substance called lincomix because the pony had had a pus eye from conjunctivitis. He said to her “I'm sorry”, I should have put it away with the other needles.
6. As to the process of shaving the tails of greyhounds in his care he said that he initially only shaved Ohana Sitdown, but then proceeded to shave some of his other dogs on various occasions after the Stewards initial visit. He said that he shaved Ohana Sitdown because she had been shaved by the Stewards twice when samples had been taken and she looked “ratty”. He said he was pedantic about how his dogs looked and he loves presenting them to the best of his ability. He said that he had attempted to trim the tail without shaving, but there was dandruff or dirt or some similar substance clogging up the inside back of the tail. He was worried there could be fleas breeding there.
7. Mr Floyd said that he had similar concerns about the other dogs whose tails he shaved. He gave his dogs hydro baths three times a week, but this had not removed the offending substance from under the tails of the dogs. He said whilst he was shaving the tail it crossed his mind that the Stewards might think that he was doing so to avoid further sampling. He comforted himself by having remembered that he had seen a test report on the internet which indicated that hair from a dog’s chest was able to be used for testing as easily as hair from the tail.
8. He denied that he had deliberately shaved the four greyhounds to avoid the detection of testosterone.
9. He agreed in cross examination that he had shaved Lucknow Gunner even though that dog had not had any sample taken by the Stewards and the same was the case for Rinaldi. He also agreed that he had not shaved another two greyhounds which had been tested, namely Steamy and Elsa.
10. Mr Floyd gave evidence about having observed the procedure for the taking of samples from the dogs on 31 July 2023. He said that he was concerned that Dr Buiter was not following proper procedures, because she and her assistant did not wash their hands, the area which they used had not been cleaned, and he had seen Dr Buiter pull scissors out of the bag without them being sterilised.
11. Ms Jennifer Floyd also gave evidence before us. The main thrust of her evidence was in relation to the syringe. She said that she had used it on the day before, and that at that time it had lincomix in it. She said that she had given it to her pony for puffy eyes. She agreed in cross examination that the needle on the syringe was not suitable for use on a cow because of the risk that it would bend or break.
12. In assessing the evidence of Mr Floyd and his wife, there is one other matter which we take into account. The evidence before us is that both are persons of good character. Neither has ever been dealt with by the Stewards in the past for any offences or breaches of the greyhound racing rules. In his submissions, Mr Floyd expressed a concern that he had been victimised by the Stewards because of his involvement in allegations of corruption and theft in the industry.
13. He suggested that the Stewards behaved aggressively towards him on their visits to his property, and that they appeared to have predetermined views as to his guilt. He said that he had been “targeted” by them. These allegations were denied by the Stewards who gave evidence.
14. We have not heard any evidence Mr Floyd's past dealings relating to these matters, but wish to emphasise that we have not taken any of these matters into account.

**Charge 1 – Presentation with testosterone** **propionate**

1. Mr Floyd cross-examined the Investigating Stewards called to give evidence before us as to matters relevant to charge 1. Although he pleaded guilty to this charge, and that plea would normally be taken as an admission as to the presence of the prohibited substance, in this case it was clear to us from Mr Floyd's evidence and from his cross examination of the witnesses that he did not accept that testosterone propionate was actually in the hair samples analysed. When we asked him to clarify his position about this prior to taking the plea, he told us that he accepted that testosterone propionate was in the first hair sample, but he relied on the fact that it was not in the urine sample. Mr Floyd did not have legal representation in this hearing and so we have determined that the interests of justice require us to disregard his plea of guilty in coming to a determination on this charge.
2. He suggested that during the hair sampling by Dr Buiter on other dogs at his property, the correct procedures for the taking of hair samples had not been followed. In particular he said that he had observed that the scissors used to cut the dogs’ hair were not sterilised. At the time these hair samples were taken, Dr Buiter was assisted by Mr Scott Burke, an Investigative Steward. Mr Burke gave evidence of hearing Mr Floyd insist at the time that the scissors being used were not sterilised. He said that he thought that this was “weird” as the scissors were contained in a sterilised pack, and he had seen that Dr Buiter had opened that sterile pack in the presence of Mr Floyd and used only the scissors from that pack.
3. Dr Buiter also gave evidence on this issue. Dr Buiter’s evidence about this was that the scissors were taken from a sterile pack and that both she and Mr Burke wore sterilised gloves during the entire sampling process.
4. She said that it was very difficult to take hair samples from the shaved tails. She therefore employed a different procedure for one of those dogs whose tail had been severely shaved. She described how in respect of this dog she dropped the hair sample onto a sheet and then transferred the sample from that sheet into the evidence bag. She said that it was impossible to take a sample of hair in any other way. This procedure was used only for one of the shaved dogs.
5. In our opinion, the criticism of the use of the scissors is not well founded.
6. As we understand it, although Mr Floyd did not directly contest the accuracy of the initial hair swab result from Ohana Sitdown, he submitted that because the simultaneous urine sample had not detected the presence of testosterone in that dog, all the hair samples taken from Ohana Sitdown must be inherently unreliable.
7. Dr Buiter gave evidence as to the reason for the different result in each medium. She said that urine or blood tests for testosterone only remain positive for a very short time – perhaps a matter of hours. On the other hand, hair tests were the test of choice for testosterone, as they could detect testosterone for up to many months after administration.
8. We accept the explanation given by Dr Buiter that samples taken from hair are much more accurate than urine samples because of the long time for which testosterone remains in hair compared to in urine or blood.
9. Mr Floyd also pointed to the fact that subsequent hair sample testing of Ohana Sitdown – taken in October and December of 2023 – had not detected any trace of testosterone. Dr Buiter’s evidence was that this was likely to be because Mr Floyd had not injected the dog with that substance after the time of the first positive test, and the substance had slowly been absorbed by the dog over the next few months.
10. Mr Floyd also criticised the Stewards for not charging him in relation to the 31 July sample. As we understand it, his point was that if the Stewards had been confident of the accuracy of that test, he would have been charged in relation to it. The evidence of Mr Bartolo, the Investigating Steward, was that no charge had been laid in consideration of the long period during which testosterone remains detectable. There was no evidence of any fresh injection relating to this swab.
11. Mr Floyd also complained that he had not been given a sample so that he could conduct independent testing and that certain information regarding the test results had not been supplied to him. We are persuaded that the experts who gave evidence in this case went out of their way to provide all relevant material to Mr Floyd. There did not appear to us to be any other reasonable avenues available which would have cast doubt on the scientific evidence presented.
12. Mr Floyd also suggested when cross-examining Mr Bartolo that Mr Bartolo had left some unidentified GRV material at the house of his friend, Mr Bailey. The Stewards had visited Mr Bailey to interview him shortly after they had taken samples from Mr Floyd’s dogs on 27 June 2023.
13. Mr Floyd referred to these items as a GRV ‘bag of goodies”. It appears that he was suggesting that this material might in some way be related to this case and might throw some doubt on the chain of continuity in relation to the samples on which GRV relies. We also understand his argument to be that the fact that Dr Buiter admitted in her evidence that she had left some unused testing kits at another house and that they had needed to be returned showed that the GRV witnesses were generally sloppy in the way that they treated test samples. Thus, the testing evidence should not be relied upon.
14. Although this allegation was put to Mr Bartolo and Dr Buiter, there is no evidence whatsoever before us that anything untoward had happened which would throw doubt on the integrity of the samples taken by Dr Buiter.
15. Mr Floyd also suggested that the Stewards’ investigation as to the source of the testosterone had been inadequate. For instance, he pointed out that they had not asked him to provide bank statements or any documents which might prove or disprove the purchase by him of testosterone.
16. We do not accept Mr Floyd’s criticisms of the scientific evidence as to the presence of testosterone propionate in the samples relied on by the Stewards. We have concluded that the scientific and veterinary evidence of Dr Buiter, Dr Batty and Dr Karamatic was reliable and clearly establishes the accuracy of the test results relied on upon by the Stewards in this case.
17. It is clear from the evidence that Mr Floyd presented Ohana Sitdown at the race at Warragul on 23 April 2023 and that at the time of the race the dog had testosterone propionate in its system. There is no credible evidence throwing doubt on this conclusion.
18. Thus, the first charge is clearly proven.

**Charge 2 – Administration of testosterone** **propionate**

1. This charge arises out of the finding of the syringe in Mr Floyd's possession on 21 June 2023. It is clear from the evidence of the Stewards and Dr Buiter that Mr Floyd did have such a syringe in his possession on that day. It is clear that it was in his pocket, fell from it, and was retrieved. All of this is captured on the body cameras worn by the Stewards. The syringe that was confiscated by the Stewards was clearly Mr Floyd’s syringe.
2. Although Mr Floyd suggested that it was possible that another syringe had been nefariously substituted by persons unknown by the time it came to be tested, the continuity evidence about the syringe from the time it was confiscated until the time it was tested was comprehensive. It was not seriously challenged, and we accept it.
3. The syringe was tested and found to contain testosterone propiniate – the very substance that we have found was in the dog when it was raced on 23 April 2023. The scientific evidence which we accept is that this substance can be detectable in a dog’s hair for many months. There is no credible evidence that any event occurred to raise a doubt on the authenticity of the sample tested from the syringe.
4. The Stewards point to two major actions of Mr Floyd as indicating that he did indeed knowingly administer testosterone propionate to Ohana Sitdown by injection prior to the race on 23 April 2023 and that he knew that he was doing so. We shall now deal with them.

**(i) The syringe**

1. The Stewards attended at Mr Floyd's property on the first occasion on 27 June 2023. This visit was made without prior warning. There was evidence given about this visit by the three stewards in attendance. Mr Dylan Bartolo, an Integrity Officer with GRV, conducted the questioning of Mr Floyd. He was accompanied by another Integrity Unit Officer, Mr Scott Burke. Also accompanying these Stewards was a veterinary officer, Dr Madonna Buiter. The interview was also recorded on body cameras worn by each of the Stewards. This video evidence was watched by us during the hearing.
2. During the interview both Mr Burke and Dr Buiter noticed that when Mr Floyd went to take his mobile phone out of his pocket, a syringe fell out of that pocket and onto the ground. The syringe had the needle attached. Mr Floyd then later picked up the syringe and put it back in his pocket.
3. Once Mr Bartolo finished his questions, Mr Burke then asked Floyd about the syringe. Mr Floyd said that the syringe was for cows owned by his parents and that it contained “Ecomix or something like that”. He said that it was in his pocket because he probably had this on the farm in the last few days. He then said that he injected the cows with a drug called Ivomec.
4. He repeated this assertion when he was questioned again by the Stewards on 10 August 2023. At that time, he provided some detail about the use of Ivomec on his wife’s parents property. He said that it was a drench and that he had obtained it over the counter rather than by veterinary prescription. As to the size of the syringe, he said that he would use the syringe three times and he would not put the full amount into one syringe. It was so potent that it had to be injected at three sites on the cow’s rump.
5. In relation to this, we note that when cross-examining Mr Burke, Mr Floyd suggested to him that he had said in the interview that he was not using it on a cow, but instead on a calf. Mr Floyd repeated this suggestion when he gave evidence before us. We consider it significant that Mr Floyd made no such suggestion to the Stewards when he was questioned about this on 10 August 2023. Instead, he provided even more detail about the way in which he used the Ivomec on cows and where he had got it from.
6. Given that Mr Floyd had suggested that the syringe contained Ivomec, both laboratories were also asked to test for the presence of Ivermectin, the active component of Ivomec. Neither laboratory found any trace of Ivermectin, or the related chemical, eprinomectin. On the basis of these results, Dr Karamatic gave evidence that it was highly unlikely that the syringe was used to administer Ivomec to any animal.
7. Dr Karamatic’s report dealt with the size of the needle attached to the syringe. He said that the syringe was too small to contain an appropriate dose of Ivomec for a cow, and the needle was too narrow and fragile to be used safely in the thick hide of a cow.
8. Ms Jennifer Floyd suggested in her evidence and in an email to the Stewards that the syringe had been swapped with another incriminating syringe before it was tested. However, in cross-examination she appeared to back away from this suggestion, and in any event, there is no evidence for it. There was no real challenge to the continuity evidence, and we are satisfied that the contents of the syringe that was sampled was not tampered with from the time it was confiscated to the time it was tested.
9. The Stewards say that the possession by Mr Floyd of a syringe containing testosterone propionate – the very form of testosterone found in Ohana Sitdown – is clear evidence that he was accustomed to injecting this substance into his dogs. When this evidence of possession of the syringe containing a synthetic form of testosterone is combined with the scientific evidence that that the “esters” in testosterone are man made and not naturally occurring, it is submitted that the finding of those esters means that they must have been injected into the dog. The dog could have not otherwise absorbed such chemicals. They could also not have been absorbed through feed.
10. Testing by both laboratories also suggested the presence of another substance present in the syringe, along with the testosterone. This substance was lincomycin. It is an antibiotic. It is not a prohibited substance and so no standard has been developed in either of the laboratories. Thus, it was not possible to prove that this substance was present, although Dr Karamatic said that on the findings able to be made, the presence of this substance was “highly likely”.
11. It is significant that the Stewards informed Mr Floyd on 10 August 2023 that traces of lincomycin had been found in the syringe. On 22 August 2023, 12 days later, both Mr and Mrs Floyd asserted in an email exchange with Mr Simon McLean, Investigations Manager with GRV, that the syringe was used to inject horses with lincomix, a proprietary form of lincomycin, rather than to inject cows with Ivomec.
12. No mention had been made by Mr Floyd of the likely presence of this substance before that time, even though on Mr Floyd’s evidence he had been told of the presence of this substance by his wife on the 27 June 2023.
13. Mr McLean immediately requested details of the substance, including where it was sourced, who was the veterinary surgeon. He also requested details of what was prescribed and the instructions given. He did not receive any response to these inquiries.
14. The scientific evidence in this case is that lincomycin is potentially fatal in horses. We find it unlikely a veterinary surgeon would prescribe it. Even if it was prescribed, the dosage rates would require a far larger syringe than the one confiscated.
15. In cross-examination, Mr Floyd suggested to Mr Bartolo that he had previously mentioned the presence of lincomix in the syringe. Mr Bartolo denied this. We do not accept that lincomix was mentioned by Mr Floyd until after he had been advised of the traces of lincomycin on 10 August 2023.
16. The only other information that has been provided by Mr Floyd in relation to the syringe was that provided in an email dated 14 August 2023 from his wife. In that email she says this:

“The biggest point of contention for me is the said syringe. The syringe that I had used the evening before and that very morning and had left on our kitchen table. Not only has the contents of that syringe been changed from what was actually in it. It was removed from our property, not flagged as evidence, nor did my husband cite it or sign it once it was taken from him. It also magically changes sizes. Your staff also quote vets they have spoken to regarding appropriate size needles for my pony and young calves who they obviously did not cite and have assumed their weights”.

1. The assertions to the Stewards in this email are clearly contrary to Mr Floyd’s assertions about the syringe.
2. Mr Floyd criticised the Stewards’ evidence as to the circumstances under which the syringe was found to be in his pocket. He insisted that he had made no attempt to conceal the syringe. There was a suggestion in the summary of evidence contained in the brief that he had done so. This suggestion was not borne out in the evidence given by the Stewards. Mr Floyd suggested that false evidence was given regarding his trying to hide the syringe.
3. We find it unnecessary to decide this point. We make no finding of concealment of the syringe by Mr Floyd. The essential issue is that the syringe was in Mr Floyd’s pocket at the time of the unannounced inspection on 27 June 2023, and that it was later tested and found to contain testosterone propionate.
4. Mr Floyd also pointed out that there were other syringes found by the Stewards in his kennels and which were not confiscated. In our view there was no need for this to be done.
5. The Stewards submitted, and we accept, that the possession by Mr Floyd of a syringe containing Testosterone propionate without any adequate explanation is powerful evidence pointing to the conclusion that he had used this syringe to inject testosterone propionate into Ohana Sitdown at some time prior to the race on 23 April 2023.

**(ii) The explanation in relation to trimming his dogs’ tails**

1. During the course of the investigation, the Stewards became aware that Mr Floyd had presented several of his dogs at races with their tails trimmed of all hair. When he was questioned about why he had done this, he said that all the dogs had trimmed the hair for reasons of hygiene.
2. The significance of the act of trimming the tails is this. Dr Karamatic gave evidence that, when testing for testosterone in a dog, there is a significant difference between the reliability of samples of urine taken from dogs and samples of hair. The hair will continue to show traces of testosterone for several months after the dog has been injected with testosterone. In contrast the urine may cease to show traces within a few hours or a day. It is for this reason that hair testing is the gold standard in testing for testosterone. Tail hair is more precise than body hair. For this reason the collection of Tail hair is the ‘specimen of choice’ when testing for testosterone.
3. Dr Karamatic gave evidence that rules were introduced before hair testing was introduced to make it an offence to interfere with or prevent the collection of a hair sample by removing hair from the tail without the permission of the Stewards.
4. The Stewards say that the reason Mr Floyd trimmed the dogs’ tails is that he knew by that time that he was being investigated for administering testosterone to his dogs and he wanted to make sure that no hair was available to be tested. Mr Floyd denies this emphatically.
5. We do not accept Mr Floyd’s evidence on this issue. He did not appear to us to be a truthful witness. We regard his explanation about these matters to have been flimsy in the extreme. We agree that the evidence compels the conclusion that he trimmed the hair of his dogs in order to make hair testing difficult, if not impossible.
6. We agree that this reveals that he had a guilty mind in relation to the issue of administration of testosterone propionate to Ohana Sitdown.

**(iii) The findings from other dogs tested at the property.**

1. When the Stewards attended at Mr Floyd's property on 27 June 2023, they retested Ohana Sitdown, but they also tested three of Mr Floyd's other dogs which were present at the property. Those dogs were Elsa, Steamy and Paw Patrol. In relation to the other three dogs, the test result was that testosterone propionate was not detected but that there were indications.
2. At a race meeting on 27 July 2023 his dog Ohana Love was also tested. On that occasion this dog had a shaved tail. In any event, there were no hair kits present at the race meeting. Thus, urine and blood samples were taken from this dog. Testosterone was not detected in either the urine or blood sample.
3. The Stewards returned to Mr Floyd's kennels on 31 July 2023. On that occasion they tested seven of his dogs. Each of the tests were from hair samples, although Mr Floyd had shaved three of those dogs. Thus, it is possible that some hair samples were not from the tail.
4. The results of each one of these seven tests were that testosterone propionate was not detected in the samples. However, on each of those seven samples the RASL laboratory noted “indications of testosterone propionate” in the sample.
5. Dr Karamatic provided an explanation of what that meant in his report, and this was confirmed by Dr Cawley when he gave evidence before us. Dr Karamatic said that the laboratory takes a conservative approach in its analysis and will not issue a certificate saying that there is testosterone in the sample unless the testing meets all their criteria. However, some of the criteria were met in relation to each of these seven samples. In particular, there were indications of the presence of a synthetic testosterone “ester”. Dr Karamatic gave evidence that this is not a normal observation on hair testing.
6. Dr Cawley said that there were criteria used by the association of official racing chemists which had to be met before a positive result could be certified. Simply put, the guidelines require a certain signal to noise ratio. This means three ion transitions at greater than 3 times the background noise. In the case before us, the sample results indicated only two ion transitions. The other criteria appear to have been met. However, as all three ion transitions were not present the certification could not be made.
7. The Stewards rely on this evidence. They do not say that it positively shows that any of these dogs can be proven to have had testosterone in their system. Rather, they say that this evidence, taken in conjunction with all the other evidence, is circumstantial evidence which buttresses the scientific evidence regarding Ohana Sitdown. We agree with this submission.
8. It is important to emphasise again that the form of testosterone involved in this case is a synthetic form which does not occur naturally. It must be injected. Mr Floyd had in his pocket the syringe containing this exact form of testosterone. As we will discuss, we are also satisfied that he lied to the Stewards about what that syringe contained.
9. In his written submissions, Mr Floyd has raised the question of whether the testosterone may have been present in meat and bones from cattle implanted with steroid implants. He outlined in his submissions that he was accustomed to feeding all his dogs with bones and meat from a local farmer who had informed him that the product was from cattle implanted with steroid implants that contained testosterone propitiate. As we understand it, his argument is that it is likely that the testosterone came from this source and not from injection with the syringe.
10. This is the first time that this issue has been raised by Mr Floyd. There was no evidence about it in the hearing before us. We therefore reject this as an implausible explanation for the presence of the synthetic testosterone propionate in the dog. All the evidence which we have heard points to injection of the testosterone propionate into the dog by Mr Floyd.
11. For all these reasons, we are comfortably satisfied that Mr Floyd administered testosterone to Ohana Sitdown as alleged in Charge 2.

**Charge 3 – Incomplete treatment records**

1. This Charge was withdrawn.

**Charge 4 – Administration of testosterone**

1. This Charge was withdrawn.

**Charge 5 – False and misleading statement during investigation**

100.It is clear from the evidence that the syringe did not contain Ivomec. The question is whether in telling Stewards that it did, Mr Floyd knowingly lied. We have concluded that he did. He provided an elaborate description as to what Ivomec was used for and strongly asserted to the Stewards on two occasions in the June and in August Stewards’ inquiries, that it was used for cows. We accept the scientific evidence that the size of the vial and the needle are both totally unsuitable for use on a cow. Although Mr Floyd later argued that it was used for calves, not cows, we regard that as a blatant untruth.

101.Mr Floyd did not produce evidence from his parents who he alleged owned the cows. His wife’s evidence was that this very syringe was on the kitchen table on the morning of the unannounced inspection by the Stewards.

102.Once Mr Floyd had been told that lincomycin had been found in the syringe, he and his wife asserted that it was lincomix. He was asked by the Stewards in August of last year for details about this substance, its purpose and what it was used for and did not provide any of those details. On analysis, the syringe was indeed found to contain some traces of lincomycin. However, the presence of this substance does not affect the fact that testosterone was present in the vial. In our view, the presence of lincomycin is a red herring.

103.Given that we accept that the syringe contained testosterone it is a clear inference that Mr Floyd falsely suggested that the syringe contained a benign substance in order to mislead the Stewards. We are comfortably satisfied that this is the only reasonable inference to draw from the evidence and thus find this charge to be proven.

**Charge 6 – Possession of a permanently banned prohibited substance.**

104.It is clear from the evidence presented to us at this hearing that Ohana Sitdown was presented at the race on 23 April 2023 with testosterone propionate in its system. We have further found that a syringe in the possession of Mr Floyd contained testosterone propionate. Testosterone propionate is a permanently banned prohibited substance under the Rules. Our finding that Floyd possessed testosterone propionate compels the conclusion that he possessed a permanently banned substance. Thus, we find charge 6 proven.

**CONCLUSION**

Given the above, we shall hear the parties on the question of penalty.

Mark Howard

Registrar, Victorian Racing Tribunal